IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

FIRST APPEAL NO.39 OF 1989

The Regional Director
Employees' State Insurance
Corporation, Bombay ... Appellant

V/s.

M/s.Bhave Pvt. Ltd., Bombay ... Respondent

Mr.M.V. Jaykar for Appellant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 16, 2004**

ORAL JUDGMENT:

. This appeal has been filed under the provisions of Employees State Insurance Corporation Act against the judgment of the Employees State Insurance Court dated 22.2.1988. The Employees State Insurance Court allowed the application filed by the respondent under section 75 of the Employees State Insurance Corporation Act (for short, hereinafter referred to as 'the Act) and held that the respondent-company is not liable to pay ESI contribution on overtime wages. The ESI Court has held that these amounts as claimed by the Corporation cannot be recovered from the respondent-company as the records of the company had been checked by the insurance inspectors and it was only in the year 1972 that the then insurance inspector found certain lacunae in the

payment of ESI contributions. The ESI Court was of the view that the claim made by the ESI Corporation though not barred by limitation, is not payable in respect of overtime wages and interest thereon to the Corporation.

2. The Corporation served two notices on 5.5.1975 for payment of Rs.15,969/- and Rs.12,874.56 as employees' and employer's special contribution respectively, from the respondent-company. It appears that despite sufficient notice being given to the respondent-company, it did not bother to remain present before the authorities and, therefore, an amount of Rs.17,470/- was sought to be recovered as employees contribution for the period from January 1964 to July, 1973 alongwith interest and Rs.20,461/- as arrears towards employer's special contribution for the period from 1.1.1963 to 30.6.1973 alongwith interest.

3. An application under section 75 of the ESI Act was filed by the Respondent-company questioning the recovery sought to be made from it. The ESI Court has disallowed this claim principally on the ground that earlier inspectors had not claimed this amount and it was only the last inspector one Mr.Maniar who sought contributions on the said overtime amount. It appears that the ESI Court was impressed by the fact that a random check had not been conducted by Shri Maniar, the

insurance inspector, and the evidence on record showed that earlier inspectors had not found anything outstanding and had, therefore, not made any claim for contributions on overtime wages and for interest thereon.

4. The question involved in the present appeal is whether the claim made by the ESI Corporation for contribution on overtime wages paid to the employees is maintainable.

5. Section 2(22) of the Act defines wages to mean as under:

> 2(22) "wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include -
>
> (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;
>
> (b) any travelling allowance or the value of any travelling concession;
>
> (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
>
> (d) any gratuity payable on discharge;

6. A perusal of the section indicates that all additional remuneration paid at intervals not exceeding

two months are included in the definition of wages. There is no dispute that the overtime wages paid to the employees of the respondent-company were paid regularly; nor is there any dispute that the intervals did not exceed two months. In this view of the matter, the payment of overtime wages would certainly attract contributions towards the Employees State Insurance Scheme.

7. As held in the case of *Indian Drugs & Pharmaceuticals Ltd. v/s. ESI Corporation,* **(1997) 9 SCC 71**, the definition of wages was wide enough to include payment of overtime wages though not originally stipulated in the contract of employment. The Apex Court has taken the view that overtime wages would be included in the definition of wages and, therefore, the remuneration received during the working hours as well as overtime wages constituted composite wages under section 2(22) of the Act. The Apex Court has held that contributions would be payable on such remuneration.

8. In the case of *Modella Woollens Ltd. v/s. Employees State Insurance Corporation & Anr.*, **1994 Supp. (3) SCC 580**, the Apex Court considered whether payment of bonus made at the end of each quarter also constituted wages. The Apex Court was of the view that what is material was the nature of payment. The term

production bonus itself showed that it was payment connected with or related to production over a period. Hence, bonus was considered to fall within the ambit of the definition of wages and contributions were therefore, payable under the Act.

9. In my view, the ESI Court has completely misdirected itself by coming to the conclusion that no contributions were payable on the overtime wages. The judgment of the ESI Court with respect to disallowing the claim made by the Corporation for payment of contributions on overtime wages is, therefore, set aside. First Appeal is allowed accordingly. No order as to costs.

GPN-J-602-ARHCB-12-97-31,000-PA4 [Spl.-H.C.A.S.D.D. 28e. G.R., J.D., No.4398, dated 3-7-16

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Date of Decision: OCTOBER 16, 2004

Transcript of JUDGMENT submitted on:

For Approval and Signature:-

THE HON'BLE **SMT. JUSTICE NISHITA MHATRE**

1. Whether Reporters of Local Papers may be allowed to see the Judgment?)
2. To be referred to the Reporters or not?)
3. Whether Her Ladyship wishes to see the fair copy of the Judgment?)
4. Whether this case involves a substantial question of law as to the interpretation?)
5. Whether it is to be circulated to the Civil Judges?)
6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to the Nagpur, Aurangabad & Goa offices?)

FOR INFORMATION TO:

The Hon'ble Shri/Smt.Justice

(Vishwanath Sherla)

P.A. to the Hon’ble
Smt.Justice Nishita Mhatre